



7020-02

INTERNATIONAL TRADE COMMISSION

INVESTIGATION No. 337-TA-1002

Certain Carbon and Alloy Steel Products

Commission Determination to Review an Initial Determination Granting Respondents' Motion to Terminate Complainant's Antitrust Claim; Request for Written Submissions and Setting of Date for Possible Oral Argument

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 38) of the presiding administrative law judge ("ALJ") granting Respondents' motion to terminate Complainant's antitrust claim and sets the date of March 14, 2017, for possible oral argument.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337-

TA-1002 on June 2, 2016, based on a complaint filed by Complainant United States Steel Corporation of Pittsburgh, Pennsylvania (“U.S. Steel”), alleging a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. *See* 81 FR 35381 (June 2, 2016). The complaint alleges violations of Section 337 based upon the importation into the United States, or in the sale of certain carbon and alloy steel products by reason of: (1) a conspiracy to fix prices and control output and export volumes, the threat or effect of which is to restrain or monopolize trade and commerce in the United States; (2) misappropriation and use of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States; and (3) false designation of origin or manufacturer, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* The notice of investigation identified forty (40) respondents that are Chinese steel manufacturers or distributors, as well as some of their Hong Kong and United States affiliates. *Id.* In addition, the Office of Unfair Import Investigations is a party in this investigation. *Id.*

On July 6, 2016, the presiding ALJ issued, *sua sponte*, an initial determination (Order No. 19) suspending the investigation pursuant to Section 337(b)(3). On August 5, 2016, the Commission reversed and vacated the suspension. *See Certain Carbon and Alloy Steel Products*, USITC Inv. No. 337-TA-1002, Comm’n Notice (Aug. 5, 2016).

On August 26, 2016, Respondents filed a motion to terminate U.S. Steel’s antitrust claim under 19 CFR 210.21. On September 6, 2016, U.S. Steel filed a response in opposition to Respondents’ motion to terminate. On September 9, 2016, the Commission Investigative Attorney (“IA”) filed a response in opposition to Respondents’ motion to terminate. On November 14, 2016, the ALJ issued the subject ID, granting Respondents’ motion to terminate Complainant’s antitrust claim under 19 CFR 210.21 and, in the alternative, under 19 CFR 210.18.

On November 23, 2016, Complainant and the IA filed petitions for review of the ID. Complainant also requested oral argument before the Commission. On December 1, 2016, Respondents filed a response to the petitions for review. Also on December 1, 2016, Complainant filed a response to the IA's petition for review.

The Commission has determined to review the ID. In connection with its review, the Commission requests written responses regarding the following questions:

1. Please explain the policies that underlie the injury requirement under Section 337(a)(1)(A)(iii), including an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority. In discussing this question, please also explain how the injury requirement under Section 337(a)(1)(A)(iii) is different from, or relates to, the injury requirement that applies under Section 337(a)(1)(A)(i).
2. Please explain what Complainant must prove to satisfy the injury requirement under Section 337(a)(1)(A)(iii), where the alleged unfair act in violation of Section 337 is based on a claim alleging a conspiracy to fix prices and control output and export volumes ("antitrust claim"). Please include an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority.
3. Please explain how "antitrust injury" standing, as required for private litigants in federal district courts asserting antitrust claims, *see, e.g., Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 335 (1990),

compares to, or differs from, the injury requirement under Section 337(a)(1)(A). Please include an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority. In discussing this question, please explain the chronology of the adoption of the “antitrust injury” standing requirement in relation to the injury requirement under Section 337(a)(1)(A).

4. Please explain whether “antitrust injury” standing is, or should be, required for establishing a Section 337 violation based on a claim alleging a conspiracy to fix prices and control output and export volumes as a matter of law and/or policy. Please include an analysis of any relevant statutory language, legislative history, Commission determinations, case law, or other authority.
5. Please explain whether good cause exists under Commission Rule 210.14 to amend the complaint, presuming the Complainant is required to plead “antitrust injury” in its complaint.
6. To the extent not specifically requested above, please further explain any other legal reasoning and/or argument (with citation to legal authority) advanced before the ALJ with respect to Order No. 38, and/or raised in a corresponding petition for review of the ID, and not otherwise waived, why Complainant’s antitrust claim should or should not be terminated at the present stage of the investigation.

WRITTEN SUBMISSIONS: The parties to the investigation, including the Office of Unfair Import Investigations, and interested government agencies are requested to file written submissions on the issues identified in this notice. Written submissions must be filed no later than close of business on January 17, 2017 and may not exceed 50 pages in length, exclusive of any exhibits. Responsive submissions must be filed no later than the close of business on February 1, 2017 and may not exceed 25 pages in length, exclusive of any exhibits. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

ORAL ARGUMENT: Upon review of written submissions, the Commission will determine whether to conduct oral argument. Notice of the Commission's determination will be announced no later than February 24, 2017. Any oral argument, if granted, will be held on March 14, 2017. The oral argument would be expected to last two hours. Further details about the specifics of the oral argument will be forthcoming if one is granted.

The written submissions and any oral argument must be limited to explanation and analysis of the existing factual record in this investigation in view of governing legal authority as applied to the issues identified in this notice. The written submissions and the oral argument shall not include the submission of any factual evidence, such as testimony or documents, not already in the factual record of this investigation, absent the grant of specific permission to submit new evidence based upon good cause shown upon consideration of a specific request.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number

(“Inv. No. 337-TA-1002”) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel^[1], solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

^[1] All contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: December 19, 2016

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